are now contracted away, that the exceptions would in effect nullify any existing rule to the contrary.[11]

The basis for the court's last argument is public policy. In considering a matter from this point of view the "balance of convenience" must be used, and a determination made so as to effect "the greatest good for the greatest number." The provision in question is inserted in the benefit certificates to protect the organization from being victimized, and from indirect results which would require unjust payments to be made. It should be noted that the insurance is against the husband's death and not against desertion. It has been found, however, that approximately ninety per cent of the supposed "disappearance cases" are in fact cases where the member intentionally leaves home because of domestic or other difficulties, and is never seen again. Ordinarily payment to the beneficiary after an absence of seven years would be required. It would appear that under these circumstances organizations are amply justified in the insertion of such protective measures, and that permitting them is not inimical to public policy. Though recovery in a small minority of cases might be rendered difficult, in view of the fact that these organizations fill a public need and operate on a "mutual benefit" plan, it would seem that public opinion would support measures which tend to protect them from being victimized, and subjects of indirect fraud, thus enabling them to benefit a greater number.

By holding this provision invalid the courts not only ignore an express condition precedent to a liability, but by rendering a decision in favor of the insured's beneficiary, they are creating a liability on the part of the insurer that he never intended, and to which he would probably never have consented. It would seem that this judicial legislation by which the courts ignore an express provision, the very core of the liability, and enforce upon the parties a new one is more unreasonable and more against public policy than its original insertion. *J. E. P.*

CORPORATIONS: SUABILITY OF A LABOR UNION AS A LEGAL ENTITY: LIABILITY OF A LABOR UNION FOR UNAUTHORIZED ACTS OF ITS MEMBERS—In 1914, three coal companies in Arkansas having a common management were operating under a wage agreement with District No. 21, United Mine Workers of America. In violation of the agreement the operators closed down, discharged the miners, and prepared to reopen on an open-shop basis. Immediately there followed an industrial war in which the conduct on both sides was reprehensible and inexcusable, with the death of several miners and much damage to property as a result. The companies then began suit under the Sherman Anti-Trust Act[1] for

[11] Beeson v. Schloss (1920) 183 Cal. 618, 622; 192 Pac. 292. See for full discussion of this whole topic Professor Wigmore's article, 16 Illinois Law Review, 87, 103, and cases collected therein.

[1] 26 Stat. 209, 9 Fed. Stat. Ann. 644.

damages against the United Mine Workers of America, an unincorporated organization, against District No. 21 of that organization, and against the local unions involved. The lower court allowed the action and gave treble damages,[2] but the Supreme Court in *The United Mine Workers of America v. The Coronado Coal Company*,[3] reversed the judgment, finding that the strike was merely a local matter not ordered, maintained, or ratified by the International Board of the Union, and therefore that the United Mine Workers could not be held responsible,[4] that there was no intent on the part of the unions to restrain interstate commerce,[5] that coal mining is not in itself interstate commerce even though the coal is subsequently to be shipped,[6] and that in this case the amount of coal shipped was so insignificant as not to affect appreciably prices in such commerce.

This was decisive of the case, but the Chief Justice went on to say, by way of dictum, that for wrongful acts of its members an unincorporated union is suable as a legal entity[7] separate and apart from its members. Before this decision, except in equitable proceedings, as bills for injunctions,[8] and in the absence of statutes specifically providing for the suability of such organizations,[9] it has been held that labor unions and other unincorporated associations could not, as such, sue or be sued.[10] "A party litigant must be

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[2] United Mine Workers of America v. Coronado Coal Co. (1919) 258 Fed. 829, 119 C. C. A. 469.

[3] (June 5, 1922) 42 Sup. Ct. Rep. 570.

[4] The fact that the District was doing the work of the International and carrying out its policies was held not to be sufficient to make the former an agent, for there was, quoting the opinion, a "specific stipulation between them that in such a case unless the International expressly assumed responsibility, the District must meet it alone. And the subsequent events showing that the District did meet the responsibility with its own funds confirm" this view.

[5] The primary intent of the union was merely to prevent the non-union men from working in the mines, and to press their unionization of non-union mines as a direct means of bettering the conditions and wages of their workers.

[6] Hammer v. Daggenhart (1918) 247 U. S. 251, 272, 62 L. Ed. 1101, 38 Sup. Ct. Rep. 529.

[7] Infra, n. 22.

[8] American Steel & Wire Co. v. Wire Drawers & Die Makers' Unions Nos. 1 and 3 (1898) 90 Fed. 598; Arthur v. Oakes (1894) 63 Fed. 310, 11 C. C. A. 209, 4 Inters. Comm. Rep. 744, 24 U. S. App. 239, 25 L. R. A. 414; Longshore Printing Co. v. Howell (1894) 26 Or. 527, 38 Pac. 547, 28 L. R. A. 464, 46 Am. St. Rep. 640; Beck v. Railway Teamsters' Protective Union (1898) 118 Mich. 497, 77 N. W. 13, 42 L. R. A. 407, 74 Am. St. Rep. 421.

[9] Infra, n. 13.

[10] Reynolds v. Davis (1908) 198 Mass. 294, 84 N. E. 457, 17 L. R. A. N. S. 162, requiring a suit against a labor union to be against all the members or against certain members as representatives of all the others; Cleland v. Anderson (1902) 66 Neb. 252, 92 N. W. 306, holding that a voluntary association, not organized to carry on some trade or business, cannot sue or be sued; Hanke v. Cigar Makers' International Union (1899) 58 N. Y. Supp. 412, 27 Misc. 529, where an action for damages was dismissed because brought against a voluntary unincorporated association as such, rather than against the members or their representatives; American Steel & Wire Co. v. Wire Drawers etc. Union (1898) 90 Fed. 598, holding that unincorporated labor unions cannot be sued as such; Kingsland etc. Mfg. Co. v. Mitchell (1896) (Tex.) 36 S. W. 757, holding that in the absence of statute a partnership cannot be sued

either a natural or artificial person, and . . . . there is no such entity known to the law as an unincorporated association,"[11] such associations being held to have no legal existence distinct from their members.[12] Some states by statute have provided for bringing suits against unincorporated associations in the name of the association.[13] Although the purpose of such statutes has often been to promote commercial convenience in dealings with business firms, and some statutes have been held inapplicable to associations engaged not in a commercial business enterprise but in promoting "the interests and welfare of its members,"[14] the more general statutes have in many cases been held to apply to labor unions.[15] In the Coronado case,[16] however, regardless of the absence of a statutory authorization of such a procedure, it is stated by the Chief Justice that a union may be sued under the Sherman Act[17] as an entity[18] in an action for damages for wrongs by its members. According to the learned Chief Justice, the union in this case, though unincorporated, actually existed as an entity distinct from its members, in that it had prescribed powers and liabilities, it borrowed money, it carried on an extensive financial business, and it had unity of action.[19] He then cites instances where labor unions have been the subject of legislation stating and protecting their rights, and regulating their activities.[20] From this he draws the conclusion that since unions as such have been recognized as "self-acting bodies"[21] the courts should recognize them as such in order, as a matter of convenience of procedure, to be able to get at the union funds intact[22] before

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as an entity; Gilman v. Cosgrove (1863) 22 Cal. 356, where a complaint designating a partnership as party plaintiff was held to be defective; Adams v. May (1886) 27 Fed. 907, refusing to allow members of an unincorporated association to bring an action in the name of the association; Mexican Mill v. Yellow Jacket Silver Mining Co. (1868) 4 Nev. 40, 97 Am. Dec. 510.

[11] Martin on The Modern Law of Labor Unions, p. 282.

[12] Adams Express Co. v. Hill (1873) 43 Ind. 157; Karges Furniture Co. v. Amalgamated Woodworkers' Union (1905) 165 Ind. 421, 75 N. E. 877, 2 L. R. A. N. S. 788. See also cases cited supra, n. 10.

[13] Taylor v. Order of Railway Conductors (1903) 89 Minn. 222, 94 N. W. 684; Davison v. Holden (1887) 55 Conn. 103, 10 Atl. 515, 3 Am. St. Rep. 40; Drucker v. Wellhouse (1888) 82 Ga. 129, 8 S. E. 40, 2 L. R. A. 328; Holmes v. Alexander (1915) 52 Okla. 122, 152 Pac. 819; Markham v. Buckingham (1866) 21 Ia. 494, 89 Am. Dec. 590; Byers v. Schlupe (1894) 51 Ohio St. 300, 38 N. E. 117, 25 L. R. A. 649.

[14] St. Paul Typothetae v. St. Paul Bookbinders' Union (1905) 94 Minn. 351, 102 N. W. 725.

[15] United States Heater Co. v. Iron Moulders' Union (1902) 129 Mich. 354, 88 N. W. 889.

[16] Supra, n. 3.

[17] Supra, n. 1.

[18] Infra, n. 22.

[19] Supra, n. 3, p. 574.

[20] On page 574 of the opinion there is an exhaustive tabulation of statutes concerning labor unions.

[21] Supra, n. 3, p. 576.

[22] "Such organizations are suable . . . . and funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes."

distribution to members. The cases cited by the Chief Justice[23] as being instances of suing unions as legal entities are all equitable proceedings against combinations declared by the Sherman Act[24] to be unlawful as in restraint of trade. These cases do not support the proposition that a union as such is liable in an action at law for damages due to wrongful acts of members; and it has long been recognized that equitable proceedings[25] are an exception to the general rule.[26] The Taff Vale case[27] is also relied upon, though it has not been followed in the United States, and was the occasion for the enactment of the English Trades Disputes Act in 1906,[28] expressly exempting unions as such from legal liability in actions for damages.

The question presented is whether unincorporated associations in general, and labor unions in particular, have enough of the corporate attributes to justify holding them suable for damages as corporate entities. Since joint-stock companies as such are not suable, in the absence of statute, it is submitted that the same should hold true in the case of other unincorporated associations, as labor unions. The unions are not profit-making, commercial, business concerns, but are associations engaged in the social enterprise of promoting the welfare, safety, and health of their members. Such a union has no charter from the state, files no articles or by-laws with the state, and may even have no place of business other than the place where the meetings of members or directors take place. The union has no capital stock or other capital invested in a profit-making enterprise. Payments of dues and assessments are not in the nature of purchases of capital stock, but more nearly resemble payments of premiums on insurance policies. Furthermore, it is strongly urged that the best public policy is against subjecting the unions to such a liability, and that to discourage union violence it is more effective to prosecute those who commit the violence. "The exemption of trade unions from actions in tort does not mean that wrongs they commit are allowed to go unpunished. The union members who are guilty of acts of violence can be held therefor, both criminally and in tort; but the members who

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[23] United States v. Trans-Missouri Freight Association (1897) 166 U. S. 290, 41 L. Ed. 1007, 17 Sup. Ct. Rep. 540; United States v. Joint Traffic Association (1898) 171 U. S. 505, 43 L. Ed. 259, 19 Sup. Ct. Rep. 25; Montague & Co. v. Lowry (1904) 193 U. S. 38, 48 L. Ed. 608, 24 Sup. Ct. Rep. 307; Eastern States Lumber Association v. United States (1914) 234 U. S. 600, 58 L. Ed. 1490, 34 Sup. Ct. Rep. 951.

[24] Supra, n. 1, §§ 1 and 2.

[25] Supra, n. 8.

[26] Supra, notes 11 and 12.

[27] The Taff Vale Railway Company v. The Amalgamated Society of Railway Servants (1901) A. C. 426, 70 L. J. K. B. 905, 85 L. T. 147, 50 W. R. 44, 65 J. P. 596, allowing an action to be maintained against a union as a separate entity for tortious acts of members.

[28] 6 Edw. VII, Chap. 47.

have not been direct participants cannot be held civilly liable as principals."[29]

The case also raises the question as to when a union or the non-participating members thereof,[30] can be held for the wrongful acts of union members. The Chief Justice states,[31] also by way of dictum, that "the authority is put by all of the members of the District No. 21 in their officers to order a strike, and if in the conduct of that strike unlawful injuries are inflicted, the district organization is responsible."[32] This language is somewhat ambiguous. It is not wholly clear whether the Chief Justice means to include in the category of acts "in the conduct of the strike" all acts of the officers or of the men responding to their call, or merely acts of such persons in the course of their employment according to the usual rules of principal and agent.[33] If the latter interpretation was intended, no one can argue with the language quoted from the opinion of the Chief Justice, and perhaps since it is merely a dictum it is to be assumed that he could not have intended to abrogate so obvious a rule. But the language has excited much comment, and it is

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[29] Commons and Andrews, Principles of Labor Legislation, pp. 124, 125. On the other hand, it is contended that it is time for the law to recognize associations to the extent at least of holding association funds in damages for association acts, whether there is a formal incorporation or not. Such liability discourages the accumulation of funds by unincorporated organizations and thus renders them less powerful. If unions are to be fostered, the policy of the English Trades Disputes Act (see 10 California Law Review, 395) in exempting their funds from liability, should prevail; but if they are to be discouraged their funds should be liable for association acts.

[30] The term "non-participating members" here refers to members of a union who took no part in wrongful acts forming the basis of a suit against the union or all of its members. Whether the liability here discussed is considered to be that of the union, or that of all of the members, including the non-participating members, is immaterial, for the principles of tort liability and of agency are the same in the case of a corporation and its agents as in the case of an association of individuals and their agents.

[31] Supra, n. 3, p. 580.

[32] This view would seem to rest on the theory that the source of liability may be determined by merely tracing the forces of causation back to their origin. It might be contended that the violence was the result of the authorization of the strike, that due to the history of such strikes in the past it would be presumed to be within the contemplation of the union officials that their authorizing of the strike might ultimately result in violence, and that the union members, by allowing their officers to authorize the strike and to carry it on through sub-agents, thereby assumed liability for all wrongs resulting as natural, proximate, and foreseeable consequences of forces set in motion by the strike declaration. But this reasoning is fundamentally unsound. The "causation" test can be applied only in the case of wrongdoers, and in determining liability the line of causation can be traced back only as far as the first wrongdoer.

[33] If the officers of the union had neither expressly nor impliedly authorized any picketing, inactive members could not be held liable for acts of violence of irresponsible strikers engaged in picketing. On the other hand, had the officers ordered peaceful picketing, as approved by Chief Justice Taft in the Tri-City case (American Steel Foundries v. Tri-City Central Trades Council et al. (1921) 42 Sup. Ct. Rep. 72), and one of the pickets carried out his duties disobediently by unlawful violence, the union would nevertheless be liable, on well-established principles of agency.

perhaps permissible to call attention to the consequences if the Chief Justice did intend to abrogate that rule. Ordinarily a person is liable for injuries that result as natural consequences of any act of his, or of his agents, only when the act involved is wrongful or unlawful.[34] The basis of the relief is the wrong of the party against whom relief is sought, or else the wrong of his agent acting within the course of employment. The mere act of union members, through the union board of directors as their agents, in authorizing a strike, is not unlawful;[35] it is therefore submitted that a mere authorization of a strike should not subject the union to liability for all wrongful acts that might be consequences of the strike. The dictum quoted above,[36] if interpreted in the broad sense, would result in holding the union liable for the tortious acts of any lawless member, regardless of the remoteness of his relationship to the controlling body of the union, and regardless of the fact that his act was not in the course of his employment in the strike.[37] Where the wrongful acts have been neither expressly nor impliedly authorized or ratified, the union funds should not be held liable, nor should the non-participating members.[38]

Though the *Coronado Coal Company* case[39] has received liberal support from the laity and from the press[40] the part of the opinion usually commented upon was, after all, uttered only obiter. Friends of labor may reconcile themselves to the Chief Justice's dicta by hoping that this will be the American Taff Vale[41] case, and will result in the creation and enactment of a new, liberal, and comprehensive industrial code based on the humanistic conception that labor is not a commodity or a mere part of the mechanism of industry, but consists of a group of human beings, so large in number, and so important in its relationship to the needs and prosperity of the nation that the continued success of our industrial organism, and the welfare of the country as a whole, demand that the human interests of our laboring group be carefully guarded.

V. L. K.

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[34] Burdick on Torts (3d ed.) pp. 106, 112, and cases there cited.

[35] Pickett v. Walsh (1906) 192 Mass. 572, 78 N. E. 753, 116 Am. St. Rep. 272, 6 L. R. A. N. S. 1067, 1075; Jensen v. Cooks' & Waiters' Union (1905) 39 Wash. 531, 81 Pac. 1069, 48 L. R. A. 302; Goldfields Consolidated Mines Co. v. Goldfield Miners' Union (1908) 159 Fed. 500; Quinn v. Leathem (1901) A. C. 495, 538, 70 L. J. P. C. 76, 85 L. T. 289.

[36] Supra, n. 31.

[37] See Professor Sayre's comment to this effect in 48 Survey 385, 386.

[38] Loewe v. Lawlor (1915) 235 U. S. 522, 59 L. Ed. 341, 35 Sup. Ct. Rep. 170. Also see supra, n. 30.

[39] Supra, n. 3.

[40] See 131 Outlook 286, where it is stated that "the decision will be welcomed by the very large number of people who have long believed that legal and financial responsibility by unions for acts committed by their members under the sanction of the unions would tend to reasonableness and security of industrial conditions."

[41] Supra, n. 27.